

**PRACTICES AND PROCEDURES OF
JUDGE SEAN J. McLAUGHLIN**

I. GENERAL MATTERS

A. Communications with the Court

Judge McLaughlin prefers that motions be submitted; letters may be permitted in unusual circumstances.

B. Communications with Law Clerks

As a general rule, Judge McLaughlin discourages contact with law clerks relative to case administration or the status of pending motions.

C. Telephone Conferences

Judge McLaughlin will permit attorneys or parties to participate in conferences by phone, depending on the geographic location of the individuals and the nature of the conflict. He prefers that Pittsburgh counsel appear in person. Trial counsel are required to attend pretrial conferences regardless of geographic location.

D. Pro Hac Vice Admissions

Judge McLaughlin requests that a motion for pro hac vice admission be filed, which routinely will be granted.

E. Comment to the Media

Judge McLaughlin adheres to the standards set forth in the Local Rules of Court and has no additional policy.

II. MOTIONS PRACTICE

A. Oral Argument

Judge McLaughlin routinely grants requests for oral argument in civil and criminal cases. In addition, he will frequently schedule oral argument on his own.

B. Briefs

Judge McLaughlin requires briefs to be filed except for extensions of time, routine motions to amend and non-complex discovery motions. Reply briefs are permitted; surreply briefs are not permitted without leave of court. The page restriction is twenty-five (25) pages.

C. Chambers Copies of Motion Papers

Judge McLaughlin prefers NOT to receive a courtesy copy of motions papers.

D. Scheduling

Generally, a party will have twenty (20) days to file a response to a motion.

Judge McLaughlin prefers that briefs be filed at the time the motion is filed. If a brief is not filed, the judge will issue an order requiring the other side to respond within twenty (20) days and scheduling a reply brief, if any, within twenty (20) days thereafter.

E. Magistrate Judge's Report and Recommendation

Judge McLaughlin reviews the briefs, the objections to the Report and Recommendation, and gives the case de novo review. Generally, he does not request further briefs. Oral argument on the objections will occasionally be granted.

F. Evidentiary Hearings

On criminal case matters, Judge McLaughlin will hold the evidentiary hearing in advance of trial. On civil case matters, he will conduct the hearing near the date set for trial.

G. In Limine Motions

Judge McLaughlin prefers the presentation of such motions at least ten (10) days in advance of trial. Pursuant to his Trial Instructions (Exh. III.D.), on the first day of trial, counsel will appear in chambers at 8:30 a.m. for argument on any non-resolved motions.

III. CIVIL CASES

A. Pretrial Procedures

1. Local Rule 16.1

Judge McLaughlin issues a standard Case Management Order (Exh. III.A. 1.), which follows Local Rule 16. 1.

2. Pretrial Conferences

For cases designated as Track I, Judge McLaughlin generally does not conduct additional case management conferences unless requested. For Track II cases, additional conferences are set at six-month intervals or as otherwise needed.

3. Settlement

Judge McLaughlin will conduct a settlement conference at any time if requested by all counsel. Generally, in a non-jury case, Judge McLaughlin will refer the parties to another judge or magistrate judge. Judge McLaughlin encourages the parties to explore settlement through any means, including ADR.

4. Extensions and Continuances

Judge McLaughlin will generally grant reasonable extensions of time for discovery if warranted under the facts of the case.

B. Discovery Matters

1. Length of Discovery Period and Extensions

Judge McLaughlin generally permits 120 days for discovery. Reasonable extensions will be granted as necessary.

2. Expert Witnesses

Judge McLaughlin does not have a general policy with respect to discovery depositions of expert witnesses.

3. Deposition Disputes

Judge McLaughlin will entertain telephone calls from attorneys at a deposition to resolve discovery disputes.

4. Stay of Discovery

Except in the unusual case, Judge McLaughlin will not stay discovery during the pendency of a motion to dismiss or other dispositive motion.

5. Rule 11 Motions - Rule 37 Sanctions

Judge McLaughlin has no specific practice with regard to Rule 11 Motions and Rule 37 Motions for Sanctions. If the motions pertain to a discrete part of the case or thing done, the judge will rule immediately.

C. Injunctions and TROs

Judge McLaughlin has no standard practice or procedure with respect to injunctions or TROs and the use of expedited discovery.

D. Trial Procedures

1. Scheduling of Cases

Every effort is made to give counsel sufficient advance notice as to when their case will be called. The presentation of testimony/witnesses out of turn is permitted, if necessary.

2. Trial Hours/Days

Jury trials are tried between the hours of 9:00 a.m. and 4:45 p.m. Non-jury trials are tried between 9:00 a.m. and 4:45 p.m. Judge McLaughlin has no set time for evidentiary hearings.

3. Trial Briefs

Judge McLaughlin does not require but welcomes trial briefs. The page limitation is twenty-five (25) pages.

4. Voir Dire

In civil cases, the Deputy Clerk conducts the voir dire. Counsel is generally not permitted to conduct voir dire of the panel; counsel may ask questions on individual voir dire. Counsel is permitted to supplement the court's standard voir dire; see Judge McLaughlin's Trial Instructions (Exh. III.D.). Any voir dire questions must be received in the judge's chambers no later than the business day before the commencement of trial. Judge McLaughlin will hold a voir dire conference the morning of trial.

5. **Notetaking by Jurors**

In a lengthy, complex trial, Judge McLaughlin does permit note taking.

6. **Side Bars**

Judge McLaughlin permits side bar conferences. He has no special rules regarding them.

7. **Examination of Witnesses Out of Sequence**

Judge McLaughlin will permit, within reason, examination of witnesses out of sequence.

8. **Opening Statements and Summations**

Judge McLaughlin generally does not limit the amount of time for opening statements and summations.

9. **Examination of Witnesses or Argument by More Than One Attorney**

Judge McLaughlin generally limits examination to one attorney per witness. He has allowed multiple attorneys to conduct the examination of separate witnesses in cases where varying expertise is involved.

10. **Examination of Witnesses Beyond Direct and Cross**

Judge McLaughlin permits redirect, recross, and examination beyond redirect and recross.

11. **Videotaped Testimony**

Judge McLaughlin has no special procedures or requirements with respect to the use/admission of videotaped testimony other than the videotapes be marked as an exhibit. He will generally inquire on this matter at the pretrial conference.

12. **Reading of Material into the Record**

Judge McLaughlin has no particular practice on the reading of material into the record.

13. **Exhibits**

Judge McLaughlin has specific rules. See Trial Instructions, Exh. III.D. Plaintiff uses yellow stickers with the notation "plaintiff"; defendant uses

blue with the notation "defendant." Each sticker is to be marked with the case number at the bottom of the sticker. Exhibits are to be numbered consecutively, preferably in the order to be used at trial.

Additionally, the parties must indicate in their pretrial statements any agreement or disagreement as to the authenticity and admissibility of each exhibit. See Case Management Order, Exh. III.A.1.

Judge McLaughlin will permit the use of visual aids during trial, including opening statements.

Judge McLaughlin does not require that exhibits be offered into evidence before testimony is elicited concerning the exhibit, but the exhibit must first be identified for the record.

14. **Directed Verdict Motions**

Judge McLaughlin has no standard requirements as to directed verdict motions or motions to dismiss in non-jury trials.

15. **Jury Instructions and Verdict Forms**

Judge McLaughlin utilizes Devitt and Blackmar Pennsylvania Suggested Standard Civil Jury Instructions and his own jury charges developed over the years.

Judge McLaughlin requires the submission of proposed jury instructions and encourages the submission of verdict forms. These are to be received in chambers no later than the business day before the commencement of trial. See Trial Instructions, Exh. III.D. The judge's practice is to hold a Charge Conference the day before the charge is to be given.

16. **Proposed Findings of Fact and Conclusions of Law**

Judge McLaughlin requires the submission of proposed Findings of Fact and Conclusions of law. He prefers to receive them prior to the commencement of the trial. He will permit supplemental submissions at the conclusion of the trial.

17. **Offers of Proof**

Judge McLaughlin does not impose any restrictions upon requests for offers of proof during trial.

18. **General Courtroom Rules**

Judge McLaughlin does not impose any special rules of courtroom rules on counsel as to how they try their case.

E. **Jury Deliberations**

1. **Written Jury Instructions**
Judge McLaughlin generally does not give the jury a copy of the instructions, but will do so upon request of the parties.
2. **Exhibits in the Jury Room**
All admitted exhibits are sent to the jury room.
3. **Jury Requests to Read Back Testimony or Replay Tapes During Deliberations**
Judge McLaughlin does not normally permit the reading of trial testimony or the replaying of videotaped depositions.
4. **Jury Questions**
All jury questions are submitted in writing to the Court. After consultation with counsel, the Court will answer the question in open court.
5. **Availability of Counsel During Jury Deliberations**
Judge McLaughlin prefers that if counsel do not remain in the Courthouse during jury deliberations, they be available within fifteen (15) minutes of a call.
6. **Interviewing the Jury**
While Judge McLaughlin instructs the jurors that they are under no obligation to speak with the attorneys after a case concludes, he does not preclude such interviews.

F. **General**

1. **Special Types of Cases**
Judge McLaughlin has no special procedures or practices for particular types of cases, such as Social Security, RICO, class actions.
2. **Other Individual Practices/Procedures**
Judge McLaughlin does not have any other individual practices or procedures.

IV. **CRIMINAL CASES**

A. **Motions**

Judge McLaughlin generally grants motions for extension of time to file pretrial motions where there is significant discovery material to be reviewed.

Judge McLaughlin requires that the proposed order track the language of the Speedy Trial Act.

B. **Pretrial Conferences**

A pretrial conference is scheduled after all motions have been filed and typically

within two weeks of the trial.

C. **Guilty Pleas**

Judge McLaughlin has no special rules regarding guilty pleas.

Judge McLaughlin does not have a deadline for accepting/rejecting plea bargains.

Judge McLaughlin follows a written format for guilty pleas, which is available for counsel's review.

D. **Voir Dire**

See Answer to III.D.4., *supra*.

E. **Trial**

Judge McLaughlin permits rather wide latitude with regard to the examination of a witness/areas by more than one defense attorney in multi-defendant cases. He has no specific rules here.

Upon request, Judge McLaughlin will grant a motion for the sequestration of witnesses. Judge McLaughlin permits the use of transcripts of tape-recorded conversations if the audio is of a sufficient quality.

Judge McLaughlin permits the use of transcripts of tape-recorded conversations but issues a cautionary instruction that the real evidence is what the jurors hear, not what they read.

Judge McLaughlin permits the defense attorney to determine when to present the opening statement.

Judge McLaughlin has no specific policy concerning the submission of special interrogatories to a jury in a criminal case.

F. **Sentencing Memoranda**

Judge McLaughlin requires the submission of a sentencing memorandum subsequent to the plea or verdict and before sentencing.

G. **Sentencing Conference**

Judge McLaughlin does not hold sentencing conferences.

H. **Other General Practices and Procedures**

If requested by defense counsel, Judge McLaughlin will make recommendations to the Bureau of Prisons regarding the federal institution where a defendant should be confined.

Judge McLaughlin prefers that Jencks material be provided at least forty-eight

(48) hours prior to the commencement of trial.

Judge McLaughlin requires the filing of a formal motion for leave to permit the defendant to travel outside the district.

V. **BANKRUPTCY CASES**
N/A.

VI. **BANKRUPTCY APPEALS (TO THE DISTRICT COURT)**

A. **Filing/Scheduling**

Judge McLaughlin does not have any particular requirements regarding the filing or scheduling of bankruptcy appeals.

B. **Oral Argument**

Generally, the appeal is disposed of on the briefs but oral argument will be granted if requested.

C. **Other General Practices/Procedures**

Judge McLaughlin has no general policy or practice regarding requests to modify the briefing schedule or other requirements set forth in the Federal Rules of Bankruptcy Procedure.

v.) C.A. No. Erie)

EXHIBIT III.A.1.

before . For purposes of this paragraph 3(a), the term "discovery" shall include all methods of discovery referred to in Fed.R.Civ.P. 26(a). Motions for extension of discovery **must be filed** prior to the scheduled close of discovery **containing a proposed order reflective of all the dates that are to be extended, not just the discovery deadline.**

(c) Plaintiff pretrial narrative statement shall be filed on or before . Defendant pretrial narrative statement shall be filed on or before . Plaintiff pretrial narrative statement shall comply with Local Rule LR 16.1.4.A.1-6. Defendant pretrial narrative statement shall comply with Local Rule LR 16.1.4.B.1-6. [Third-party defendant pretrial narrative statement shall comply with Local Rule LR 16.1.4.C.]

(d) On or before , any party may file a dispositive motion which shall be accompanied by a supporting brief, and such affidavits and other supporting documentation as may be appropriate. Any responding party may file an opposing brief, together with such affidavits and opposing documents as may be appropriate on or before . Briefs are not to exceed 25 pages in length except by leave of the Court. Any party failing to respond to a motion shall be deemed not to oppose the motion. A single short reply brief by the movant will be considered by the Court if filed within 7 days of the brief in opposition to the motion. No additional briefs will be submitted.

4. Pretrial Stipulation. After the pretrial conference, counsel for the parties may be ordered by the court to meet at a mutually convenient place to complete a pretrial stipulation to further delineate the legal and factual issues involved in the action.

5. Track Designation. The above-captioned action is designated a Track action pursuant to Local Rule LR 16.1.2.C.

6. Arbitration. The parties are advised of the availability of arbitration in certain cases pursuant to this court's Local Rule LR 16.2.

7. Contents of Pretrial Statements. As provided in Local Rule LR 16.1.4 of this court, the parties' pretrial statements shall set forth the information hereinafter described:

(a) Factual and Legal Contentions. A brief but full exposition shall be made of the legal theories that will be pursued at trial and a statement shall be made, in narrative form, of the material facts that will be offered at trial.

(b) Damages. An itemized list shall be set forth of all damages claimed, including the method of calculation and how damages will be proved.

(c) Witnesses. Each party shall list those witnesses to be called at trial other than those contemplated to be used for impeachment or rebuttal purposes.

(1) Witnesses shall be identified by their full names and addresses.

EXHBIT III.A.1.

(2) Witnesses shall be separately listed and designated as to liability and damages.

(3) All witnesses who will testify as experts shall be designated as such. The report of each witness designated as an expert shall be attached to the pretrial statement. The testimony of an expert witness will be confined to those matters set forth in his or her report.

(4) A copy of each report containing the findings and conclusions of any physician who has treated or examined or who has been consulted in connection with any injury complained of and whom a party expects to call as a witness at trial must be attached to the party's pretrial statement. The testimony of each such witness will be confined to the scope of his or her report.

(d) Exhibits. Each party shall specifically identify and list each exhibit that will be offered at trial.

(1) Each exhibit must be identified by number on the party's pretrial statement.

(2) The pretrial statement shall indicate the parties' agreement or disagreement as to the authenticity and admissibility of each exhibit.

(3) Each party shall designate every issue that he or she considers unusual in the case.

(e) Amendment of Pretrial Statements. The parties shall not amend or supplement their pretrial statements without leave of court.

(f) Sanctions. At trial, each party shall be limited to those factual and legal issues contained in his or her pretrial statement. All evidence, except evidence offered for impeachment, that does not relate to a factual or legal issue set forth in the pretrial statement or disclosed at the pretrial conference shall be excluded unless the parties otherwise agree or the court orders otherwise.

8. Pre-Trial Conference. A Pre-Trial Conference shall be scheduled by the Court upon receipt of all Pre-Trial Statements. **COUNSEL TRYING THE CASE SHALL BE PRESENT AT THE PRETRIAL CONFERENCE.**

9. Additional Pretrial Requirements. In addition to the foregoing requirements relating to pretrial statements, the parties shall also comply with the following pretrial requirements:

(a) Discovery Depositions. A party intending to use a discovery deposition in its case-in-chief shall:

(1) Identify the deposition by the name of the deponent and date of his or her deposition;

(2) Designate to the court and to the opposing party the pages and lines that will be offered at trial; and

(3) Opposing counsel shall counter-designate those lines and pages of the same deposition that will be offered at trial.

(b) Settlement Negotiations. The parties shall extensively pursue settlement negotiations and advise the court of their status. At the Pre-Trial Conference, the parties shall be prepared to discuss settlement and have the appropriate authority to settle the case.

(c) Trial Time. The parties shall be prepared to state at the Pre-Trial Conference an estimate of the number of days required for trial. Counsel will be advised at that time of their position on the Trial List and tentative trial date.

Sean J. McLaughlin
United States District Judge

cc: All parties of record. TH

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

HONORABLE SEAN J. McLAUGHLIN
TRIAL INSTRUCTIONS

1. JURY TRIALS- The Court will operate a continuous trial list. The trial term shall run Monday through Friday from 9:00 a.m. to 4:45 p.m. with the exception of the first day of trial. On the first day of trial, counsel should be present in Chambers at 8:30 a.m. for the purpose of reviewing proposed voir dire, any pending motions or any other matter that may be appropriate. If, at the conclusion of a trial day, counsel is aware of a matter which will require a meeting with the Court in chambers, the Court should be advised immediately. The matter will be taken up in chambers either that evening or at 9:00 a.m. the following morning.

2. MOTIONS IN LIMINE - Motions in Limine shall be filed with the Clerk of Court and received IN THE JUDGE'S CHAMBERS ten (10) days prior to the commencement of the trial term or date certain set by the Court. Responses to Motions in Limine shall be filed three (3) days prior to commencement of trial.

3. VOIR DIRE - Questions for Voir Dire are to be filed with the Clerk of Court and a Courtesy Copy received IN THE JUDGE'S CHAMBERS no later than the business day before the commencement of trial.

4. POINTS FOR CHARGE - Points for Charge are to be filed with the Clerk of Court and a courtesy copy received IN THE JUDGE'S CHAMBERS no later than the business day before the commencement of trial.

5. EXHIBITS - Exhibits should be pre-marked as follows:

1. Plaintiff shall use yellow stickers;
Defendant shall use blue stickers;
2. Each sticker shall indicate at the top whether it is Plaintiff's exhibit or Defendant's exhibit;
3. Each sticker shall indicate the case number at the bottom.
4. Plaintiff's exhibits shall be numbered consecutively and Defendant's exhibits shall be lettered consecutively (preferable in the order to be used during trial).

Prior to using an exhibit during the course of the trial, please present the exhibit to the courtroom deputy for appropriate identification. All exhibits already admitted into evidence are to remain on the table next to the courtroom deputy. Exhibits will be maintained by the Court during the trial. Exhibits too large to be mailed in an 8 ½" x 11" envelope will be returned to

the parties at the end of the trial. All other exhibits will be retained by the Court pursuant to Local Rule 5.1 E.

6. NON-JURY TRIALS - Non-Jury Trials shall run Monday through Thursday from 9:00 a.m. to 4:45 p.m.

7. TECHNOLOGY - Judge McLaughlin's Courtroom has videoconferencing, a document camera, panaboard and telephonic conferencing capability. The Court prefers, in most circumstances, the use of Courtroom Technology whenever possible. Although, easels with blow-ups/sheets of paper are permitted in certain circumstances.

Videoconference equipment consists of the PictureTel System 4000 Series. The videoconference number is 814-456-8123 and should be dialed with 384 Kilobits Bonding. Test runs should be made far in advance of trial with the Courtroom Deputy to insure that all of the equipment is working properly.

The Document Camera consists of a Canon RE-350 Video Visualizer and monitors placed around the Courtroom.

The panaboard is like a chalkboard that has the capability of superimposing the image on the screen to an 8 ½ x 11 piece of paper for submission to the jury or the Court as an exhibit.

The Court's telephonic conference call line is 814-456-2153.